



Decision

Matter of: Americable, International, Vandenberg,
Inc.

File: B-257953

Date: August 23, 1994

James E. Meyers, Esq., Baraff, Koerner, Olender & Hochberg,
for the protester.

Marcia Jane Bachman, Esq., Department of the Air Force, for
the agency.

Richard P. Burkard, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not consider under its bid protest jurisdiction allegation that an agency will not comply with the cable franchise renewal provisions of the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq. (1988), because that Act expressly provides for judicial resolution of such disputes.

DECISION

Americable International, Vandenberg, Inc., protests the proposed issuance of a solicitation to provide cable television services at Vandenberg Air Force Base, California. Americable, the only current franchised cable operator at the base, contends that because it appears that the Air Force intends to seek additional sources for cable services, the agency may violate Americable's rights as an incumbent franchisee under the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq. (1988). Specifically, it asserts that the solicitation to be issued will contemplate evaluating its franchise renewal proposal on a competitive basis. Americable states that it has filed its protest to ensure that the proper procedures for renewal of its franchise are followed.

We dismiss the protest.

The Air Force reports that it has not yet issued a solicitation. Rather, the agency simply issued a Commerce Business Daily (CBD) synopsis to inform providers of cable services that they should request an information packet from the agency. According to the Air Force, it issued the CBD

notice in order to determine whether there are any cable operators interested in obtaining a franchise to solicit customers on Vandenberg Air Force Base, in addition to Americable. Concerning the renewal of Americable's franchise, the Air Force points out that our Office will not consider disputes over franchise renewals. Cable Antenna Sys., 65 Comp. Gen. 313 (1986), 86-1 CPD ¶ 168, recon. denied Cable Antenna Sys.--Recon., B-220752.2, Mar. 28, 1986, 86-1 CPD ¶ 298. The agency contends that the protest should be dismissed since, as explained in Cable Antenna Sys., Americable's concern that the Air Force intends to interfere with its franchise renewal rights by issuing a solicitation are not appropriate for our review. We agree.

As we stated in Cable Antenna Sys., the Cable Act expressly provides that a cable operator adversely affected by a failure of a franchising authority to act in accordance with the procedural requirements of the Act may file an appeal in a United States district court or any state court of general jurisdiction over the parties. 47 U.S.C. § 555 (1988). We noted that the Act sets forth circumstances under which a court may grant relief, and we concluded that the Act did not contemplate review by our Office of the cable television franchise renewal process. Thus, we declined to consider the alleged violation of the renewal process.

Here, despite the Air Force's assurances that it has no intention of basing Americable's franchise renewal on a competitive process and that it intends to comply with the cable law, the protester believes that the issuance of the solicitation indicates that the agency will undertake an improper franchise renewal process. Since this is a complaint about an anticipated improper franchise renewal process, it is beyond the scope of our protest jurisdiction. Cable Antenna Sys., supra.

The protest is dismissed.

John Van Schaik
Acting Assistant General Counsel

¹The protester also asserts that the agency's action infringed on its constitutional right "to provide cable service to end-users without government interference." This issue is a matter for the courts, not our Office, to decide. See DePaul Hospital and The Catholic Health Assoc. of the United States, B-227160, Aug. 18, 1987, 87-2 CPD ¶ 173.